IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.572 OF 1995

The State of Maharashtra]...Appellant

Vs.

Shrimant Appanna Chougule]
Age 22 years, resident of]
34/A/101, New Pachha Peth,]
Solapur.]...Respondent

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Mr.A.S.Shitole, A.P.P. for the State.
Ms.Manisha Patil, Advocate for Respondent.

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CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : NOVEMBER 23,2004

ORAL JUDGMENT:

1. Through this appeal, the appellant i.e. State of Maharashtra has challenged the judgment and order dated 9th June, 1995 passed by the learned Additional Sessions Judge, Solapur in Sessions Case No. 186 of 1994. By the said judgment and order, the respondent i.e. original accused was acquitted of the offence punishable under Section 498-A and 306 of IPC.

2. Briefly stated the prosecution case is as under: . Gaurabai is the daughter of P.W.1 Ramchandra Alandkar. Ramchandra Alandkar is the complainant in the present case. Gaurabai was married to the respondent-accused few years prior to the incident.

Some months after the marriage, accused started illtreating and harassing Gaurabai. Thereafter, Gaurabai came to the house of her parents. A meeting of the panchas was held. The accused gave assurances that he would not subject Gaurabai to illtreatment and harassment. Thereafter, Gaurabai was sent back to the house of the accused. Three to four days prior to the date of incident, Chinamma the mother of Gaurabai was ill, hence, Gaurabai went to see her mother Chinamma. Gaurabai returned to her house after few hours. When she returned, the accused assaulted her and asked her whether she was living an adulterous life. Thus, accused suspected the character of Gaurabai. Gaurabai returned to her house after four hours. On 7th July, 1994 at about 8.30 p.m. Gaurabai poured kerosene on her person and set herself on fire. She was removed to the civil hospital Solapur. There her dying declaration came to be recorded by P.W.2 Special Executive Magistrate Shri.Chougule. On 8th July, 1994, the complaint of her father P.W.1 Ramchandra Alandkar came to be recorded. After completion of investigation, the charge sheet came to be filed.

3. In due course, the case came to be committed to the Court of Sessions for trial. The charge came to be framed against the accused under Sections 498-A

and 306 of IPC. He pleaded not guilty to the said charge and claimed to be tried.

4. The prosecution has examined five witnesses. The learned Sessions Judge after going through the evidence adduced by the prosecution, acquitted the respondent-accused of both the charges. Hence, this appeal.

5. I have heard Mr.A.S.Shitole, the learned A.P.P. for the appellant and Ms.Manisha Patil, the learned advocate for the respondent-accused. I have also perused the record pertaining to the present case. After perusing the record, I am of the opinion that the view taken by the learned Sessions Judge was a possible and reasonable view.

6. The prosecution has examined five witnesses. The main witnesses are P.W.1 Ramchandra Alandkar who is the complainant and father of the deceased Gaurabai, P.W.3 Bhimabai who is the sister of Gaurabai and P.W.2 Mr.Shankar Chougule the Special Executive Magistrate who recorded the dying declaration of Gaurabai.

7. It is not disputed that Gaurabai died due to burn injuries. However, it is to be seen that

whether Gaurabai had committed suicide due to illtreatment and harassment on the part of the accused. As far as the complaint (Exhibit-17) is concerned, P.W.1 Ramchandra Alandkar has only stated vaguely therein that the accused subjected Gaurabai to harassment and cruelty. The complaint is totally silent on the reason for the harassment and illtreatment. In his evidence before the Court, the complainant P.W.1 Ramchandra Alandkar has stated that the accused was complaining that he did not like Gaurabai and therefore, the accused started subjecting her to cruelty and harassment. Gaurabai came to his house and narrated these facts to him. The complainant has further stated that he tried to convince Gaurabai. However, the accused continued subjecting Gaurabai to cruelty and harassment. The accused sent Gaurabai to the house of complainant and at that time, Gaurabai told her parents that she was subjected to harassment and cruelty. Complainant has stated in his substantive evidence that at that time, a meeting of panchas was held. Thereafter, he had sent his daughter Gaurabai back to the house of accused as per the decision of the panchas. Thereafter, the complainant Ramchandra Alandkar has stated that Gaurabai had come to his house as her mother Chinamma was ill. Accused stated that Gaurabai was living an adulterous life

and she should blacken her face. On this count, the accused abused and assaulted Gaurabai for four days. The complainant has further stated that his daughter Gaurabai informed this incident to him when she had been to his house. However, it is pertinent to note that complainant P.W.1 Ramchandra Alandkar has not stated in his complaint that the accused subjected deceased Gaurabai to cruelty and harassment because he did not like her. He has also not stated in his complaint that Gaurabai informed him accordingly. He has also not stated in his complaint that he tried to convince his daughter Gaurabai and sent her back to the house of the accused. The complainant P.W.1 Ramchandra has also not stated in his complaint before the police that his daughter Gaurabai informed him in his house that she was assaulted and beaten by the accused because she left his house without permission and told her that she is living an adulterous life and to blacken her face and that accused was assaulted her for two-three days. In fact, there is no material on record that after Gaurabai met her mother Chinamma who was ill, after Gourabai was beaten, she went to the house of her parents prior to her death. Thus, it is seen that complainant Ramchandra Alandkar has made improvements on material points.

8. In respect of the meeting being held, the evidence of P.W.3 Bhimabai who is also the daughter of the complainant and sister of Gourabai, does not support the evidence of complainant regarding meeting being held. As per the evidence of complainant, a meeting was held in his own house. However, Bhimabai does not speak on this aspect at all. Moreover, the panchas who were supposedly present at the meeting i.e. Ramaswami Munjali and Sonkappa Alkunte, have not been examined. In fact their statements have also not been recorded. The reason given by the Investigating Officer for not recording their statements, is not at all satisfactory.

9. The next witness is P.W.3 Bhimabai who is the sister of Gaurabai. P.W.3 Bhimabai has stated that accused subjected Gaurabai to cruelty and harassment as he did not like her and Gaurabai had narrated this fact to her. P.W.3 Bhimabai tried to convince the accused, however, the accused told her not to interfere as it was a matter between husband and wife. P.W.3 Bhimabai has stated that Gaurabai had narrated the incident which had happened when she went to meet her mother Chinamma who was ill and that accused assaulted and abused Gaurabai stating that she was living an adulterous life. However,

P.W.3 Bhimabai has not stated before the police that accused subjected Gaurabai to harassment and cruelty because he did not like her and Gaurabai had narrated this fact to her. P.W.3 Bhimabai had also not stated that she tried to convince the accused. Bhimabai has also not stated before the police that Gaurabai informed her that accused assaulted her and subjected her to cruelty, harassment and illtreatment on the allegation that she was living an adulterous life. Thus, it is seen that P.W.3 Bhimabai just like the complainant P.W.1 Ramchandra Alandkar, has also made improvements on material facts in her substantive evidence.

10. The incident had occurred on 7th July,1994 at about 8.30 p.m. P.W.3 Bhimabai has admitted in her cross examination that all the members of the family had a discussion and deliberation on 7th July, 1994 and 8th July, 1994 about the death of Gaurabai and thereafter, her father P.W.1 Ramchandra Alandkar went to the police station and filed his complaint. In view of these facts the conclusion of the learned Sessions Judge that the complaint (Exhibit-17) is lodged an after thought and appears to be a concocted document, appears to be possible one.

11. In the present case, the incident occurred on 7th July, 1994 at about 8.30 p.m. Thereafter, Gaurabai was shifted to hospital where her dying declaration came to be recorded by P.W.2 Special Executive Magistrate Mr.Chougule. As far as the dying declaration is concerned, the said dying declaration is written in Marathi. However, P.W.2 Mr.Chougule has admitted that he did not know Marathi and that he was unable to write Marathi and he could read little Marathi only that too with great difficulty. The dying declaration does not bear the endorsement of the Medical Officer regarding the condition of the patient that whether Gaurabai was conscious and in a fit mental condition to give her statement. Moreover, no Doctor has been examined in the present case to show that Gaurabai was in a fit mental condition to give her dying declaration. It is also pertinent to note the evidence of P.W.4 Smt.Usha Barve who is a social worker. She has stated that when dying declaration of Gaurabai was recorded, police were present in the Ward. One other fact which is to be taken into consideration is that the thumb impression of Gaurabai on the dying declaration is in black ink whereas the seal of the Special Executive Magistrate and his stamp stating his name, designation and address are in blue ink. So also, the signature of

S.E.M. Mr.Chougule on the said dying declaration, is in blue ink. So also the dying declaration is written in blue ink. However, only the thumb impression of the deceased is in black ink. From all the material which has come on record, the conclusion of the learned Sessions Judge that the dying declaration (Exhibit-19) was already recorded by the police constable who had obtained thumb impression of Gaurabai in black ink and lateron, the Special Executive Magistrate Mr.Chougule put his signature and stamp on the said statement so as to suit the prosecution, appears to be reasonable one. There is also no material on record to show that the deceased was in a fit mental condition to give her dying declaration. In such case, the observation of the learned Sessions Judge that the dying declaration cannot be relied upon, cannot be faulted.

12. The learned Sessions Judge has given plausible reasons for acquittal in the impugned judgment. It is well settled that if the view of acquittal could have been reasonably arrived at, then the mere circumstance that the appellate Court would have taken a different view, would be no ground to interfere. In this connection, there is no dearth

of authorities. To eschew prolixity, I am only referring to two of them i.e. **A.I.R. 1971 S.C. 66 (Khedu Mohton Vs. State of Bihar) and (2003) 1 S.C.C. 1 (C.Anthony Vs. K.G.Raghavan Nair).** In the case of **C.Anthony,** the Supreme Court has observed that unless findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in appeal, substitute its findings merely because other contrary opinion was possible on the basis of the material on record. In my view, the view of acquittal was a reasonable and possible view.

13. In the circumstances, I find no merit in this appeal and the same is dismissed.

[V.K.TAHILRAMANI.J]